

1 THE HONORABLE THOMAS S. ZILLY

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6 UNITED STATES DISTRICT COURT  
7 FOR THE WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 UNITED STATES OF AMERICA

10 Plaintiff,

No. CR08-5603Z

11 vs.

ORDER

12 JESUS VALENCIA-REVUELTA,

13 Defendant.

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15 This matter comes before the Court on Defendant Jesus Valencia-Revuelta's  
16 Motion for a New Trial (docket no. 114). Valencia-Revuelta was convicted in  
17 February 2009 of possession of marijuana with the intent to distribute (in violation of  
18 21 U.S.C. § 841(a), (b)(1)(D)) and 18 U.S.C. § 2 and alien in possession of a firearm  
19 (in violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2)). The jury acquitted Valencia-  
20 Revuelta of a third charge, possession of a firearm in furtherance of a narcotics  
21 trafficking crime (18 U.S.C. § 924(c)(1)(A)(i)). See docket no. 111. Valencia-  
22 Revuelta now seeks a new trial based on the Court's failure to instruct the jury on the  
23 meaning of the word "intent." For the reasons below, the Court DENIES his Motion.  
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1           **I.     Background**

2           Valencia-Revuelta’s trial began on February 9, 2009. The Court issued jury  
3 instructions on February 11; neither party raised any objections to the absence of an  
4 “intent” instruction. See Minute Entry, docket no. 106. The jury began deliberating  
5 that afternoon. The next morning, the jury sent an inquiry to the Court asking for a  
6 clarification. “We are hung up on the meaning of the word INTENT, found in Jury  
7 Instruction 17. Can you define ‘intent’ or clarify what it takes to prove ‘intent’?”  
8 Docket no. 109.  
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10           Instruction No. 17 related to constructive possession, which was relevant to all  
11 three charges. It stated:  
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13           A person has possession of something if the person knows of its presence and  
14 has physical control of it, or knows of its presence and has the power and  
15 *intention* to control it. More than one person can be in possession of something  
if each knows of its presence and has the power and *intention* to control it.

16 Docket no. 108 (emphasis added).

17           Outside the presence of the jury, the Court heard arguments from the parties on  
18 how (or whether) to further define intent. Valencia-Revuelta proposed that the Court  
19 utilize Washington Pattern Instruction (Criminal) (“WIPC”) 10.01, which states, “A  
20 person acts with intent or intentionally when acting with the objective or purpose to  
21 accomplish a result that constitutes a crime.” The Government, on the other hand,  
22 argued that the jury should be instructed that intent should be given its ordinary and  
23 common meaning.  
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1 After the Court indicated that it preferred the “ordinary meaning” instruction,  
2 and would not use the WIPC instruction, Valencia-Revuelta’s attorney objected as  
3 follows:  
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5 The reason I object to that, Your Honor, is because that in and of itself is an  
6 instruction. And if we’re going to do anything, I think we should simply inform  
7 the jury you have been given the instructions of law in this case, you need to  
8 refer to them in order to come to your determination, a generalizing admonition  
9 to them. Because what we’re doing now is we are giving an instruction even  
10 with that limited language, so I would object to that.

11 The Court then answered the jury question as follows: “The Court will not  
12 further define the word ‘intention.’ Please refer to the instructions as provided to you.”

## 13 **II. Discussion**

14 The Court may vacate any judgment and grant a new trial if the interest of  
15 justice so requires. Fed. R. Crim. P. 33(a). Consideration of a motion for a new trial is  
16 committed to the sound discretion of the district court. United States v. Parker, 903  
17 F.2d 91, 103 (2d Cir. 1990); see also United States v. George, 960 F.2d 97, 101 (9th  
18 Cir. 1992) (noting that appellate court reviews denials of motions for new trial using  
19 abuse of discretion standard). An error that would require reversal on appeal is  
20 sufficient grounds for granting a new trial. United States v. Wall, 389 F.3d 457, 474  
21 (5th Cir. 2004) (quoting 3 C. Wright, Fed. Practice and Procedure § 556 (3d ed.)).  
22 Improper jury instructions are an error that could merit a new trial. Id. at 474 n.13  
23 (citing Wright, § 556). The Court views the instructions as a whole to determine  
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1 whether they are misleading or inadequate to guide the jury's deliberation. United  
2 States v. Moore, 109 F.3d 1456, 1465 (9th Cir. 1997) (en banc).

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4 Viewing the instructions as a whole, the Court finds that the absence of an  
5 intent definition did not render the instructions misleading or inadequate, and a new  
6 trial is not appropriate. A defendant is entitled to a jury instruction that accurately  
7 reflects the law, but he is not entitled to his choice of wording. United States v.  
8 Warren, 25 F.3d 890, 895 (9th Cir. 1995). "Intent" is not a legal term of art, but rather  
9 a general word fully within the realm of a jury's comprehension. Cf. United States v.  
10 Chambers, 918 F.2d 1455, 1460 (9th Cir. 1990)(noting, as plain – error review, that  
11 "knowing" was "a common word . . . which the average juror could apply to the facts  
12 of this case without difficulty").

14 Valencia-Revuelta finally argues that the non-definition of intent constitutes a  
15 failure to instruct the jury on his theory of the case, making the error reversible per se.  
16 See, e.g., United States v. Escobar de Bright, 742 F.2d 1196, 1201 (9th Cir. 1984).

18 The Court disagrees. Valencia-Revuelta's theory of the case is that the Government  
19 failed to prove each element of its case, and the definition of "intention" was relevant  
20 to each of the three charges. However, the jury was sufficiently informed on the fact  
21 that intention was a necessary component of constructive possession, as indicated in  
22 Instruction No. 17.

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